



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAR 19 2009

Clifton M. Smart, III, General Counsel
Office of General Counsel
Missouri State University
205 Carrington Hall
901 South National Avenue
Springfield, MO 65897

RE: MUR 6064
Missouri State University

Dear Mr. Smart:

On September 4, 2008, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On March 4, 2009, the Commission found, on the basis of the information in the complaint, and information provided by your client, that there is no reason to believe Missouri State University violated the Act. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Kamau Philbert, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Shonkwiler".

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Missouri State University MUR: 6064

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Richard Monroe, Monroe for Congress. *See* 2 U.S.C. § 437g(a)(1).

The complaint alleges that Missouri State University ("MSU"), a federal government contractor, made a prohibited in-kind federal contribution and engaged in "federal election activity" when it named a new science facility after Congressman Roy Blunt, a candidate for re-election in Missouri's Seventh Congressional District. While the complainant generally alleges that naming the science facility after Rep. Blunt constituted something of value to his re-election campaign, it provided no specific information that connects the naming of the facility to the election. Although the complaint characterizes the naming as federal election activity ("FEA"), pursuant to 2 U.S.C. § 431(20)(iii) (which includes public communications that promote or support a clearly identified federal candidate) and suggests that this activity resulted in a contribution to Rep. Blunt, the facts do not appear to support the conclusion that the naming of the facility was either federal election activity or a contribution to, or an expenditure on behalf of Rep. Blunt.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

MSU is a four-year publicly supported multi-campus university with over 19,000 students at its main campus in Springfield, Missouri. Michael Nietzel is MSU's president. Public records show that MSU is a federal government contractor as that term is defined in 11 C.F.R. § 115.1, because it entered into multiple contracts with federal governmental agencies between October 30, 2005, and October 9, 2007, a period that includes the alleged activities.

Roy Blunt is a sitting congressman. His 2008 principal campaign committee is Friends of Roy Blunt. Commission records show that Rep. Blunt filed a Statement of Candidacy for the 2008 election on January 5, 2007.

On December 15, 2006, MSU's Board of Governors passed a resolution naming a new science facility at the Springfield, Missouri, campus the "Roy Blunt Jordan Valley Innovation Center." The resolution noted Rep. Blunt's background as an MSU alumnus and a longtime public servant with Missouri state and local governments, and it stated that the facility was being named in recognition of Rep. Blunt's "unique contributions" to the facility and his "crucial role" in supporting the facility. An MSU press release stated:

The fact is that the JVIC facility would not have been possible without the substantial support of the federal government, led by Congressman Blunt. He shared the vision and has been steadfast in his support to make the vision a reality. This naming is very fitting.

At the time of the naming resolution, Rep. Blunt had recently won re-election to his congressional seat in Missouri's November 7, 2006, general election. Neither the minutes of the Board meeting, the Board resolution, nor the December 2006 MSU press

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1 release mentions or refers to Rep. Blunt's 2006 re-election or his prospective 2008
2 candidacy.

3 On May 30, 2007, the new science facility was dedicated at a public naming
4 ceremony attended by Rep. Blunt and various state and local government officials.
5 Rep. Blunt's name is listed on signs at the facility and on MSU's website. A press
6 release announcing the dedication and opening ceremony echoed the prior release in that
7 it stated:

8 The naming of the building is an appropriate way to say
9 thank you to Congressman Blunt for his continuous support
10 of JVIC and Missouri State University.
11

12 The MSU website states: "Southwest Missouri Congressman Roy Blunt was instrumental
13 in securing defense funding for the renovation of the MFA Mill for the creation of Jordan
14 Valley Innovation Center."

15 Complainant alleges that the naming of the facility, press releases, signs, and the
16 website reference constitute federal election activity under 2 U.S.C. § 431(20)(iii) in
17 support of the congressman and results in a prohibited in-kind contribution to his
18 campaign committee.

19 MSU denies that the naming and related activities constitute FEA or an in-kind
20 contribution to Rep. Blunt. MSU asserts that the naming was not done to influence any
21 election and that it neither promotes nor supports Rep. Blunt as a federal candidate.
22 MSU's president submitted an affidavit stating that the facility was named for Rep. Blunt
23 based on his distinguished service to MSU, the surrounding community, and the
24 Southwest Missouri region. He further states that the naming was consistent with MSU's

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1 practice of naming facilities after individuals who have provided extraordinary service to
2 the university.

3 MSU pointed out that numerous other research universities have named facilities
4 after sitting congressmen without the naming of the facility being deemed a contribution
5 to their re-election campaign committees. MSU identified the following facilities:
6 Christopher S. Bond Life Science Center at University of Missouri – Columbia; William
7 L. Clay Building at University of Missouri - St. Louis; Christopher S. Bond Science and
8 Technology Incubator at Missouri Western University; Robert C. Byrd Health Science
9 Center at West Virginia University; Robert C. Byrd Center for Rural Health at Marshall
10 University; and Robert C. Byrd Institute in West Virginia (multi-university).

11 **B. Discussion**

12 The Act and Commission regulations prohibit federal contractors from making a
13 contribution or expenditure for the purpose of influencing a federal election. *See*
14 2 U.S.C. § 441c(a); 11 C.F.R. § 115.2(a). A contribution or expenditure includes any
15 gift, subscription, payment, loan, advance, or deposit of money or anything of value made
16 by any person for the purpose of influencing any election for federal office.¹ *See*
17 2 U.S.C. §§ 431(8) and (9); 11 C.F.R. §§ 100.52 and 100.111.

18 Complainant alleges that naming the facility after Rep. Blunt constitutes a
19 prohibited in-kind contribution, because it provides something of value to Rep. Blunt's
20 re-election campaign committee. Complainant links the naming activity to the

¹ The term "contribution" also includes the payment by any person of compensation for the personal services of another person that are rendered to a political committee without charge for any purpose. 2 U.S.C. § 431(8)(ii); 11 C.F.R. § 100.54. MSU asserts that it made no payment to Rep. Blunt for personal services or made any tangible gift of anything, and the available information does not show that it did.

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1 congressional campaign by alleging that the naming constitutes a public communication
2 promoting or supporting a federal candidate, and that the naming activity could be
3 considered FEA pursuant to 2 U.S.C. § 431(20)(iii).

4 These conclusions are wrong for three reasons. First, there is no basis to conclude
5 that the naming activities are FEA or were for the purpose of influencing a federal
6 election. Second and third, the naming activities do not constitute either expenditures or
7 contributions under the Act because they do not expressly advocate the election of Rep.
8 Blunt and do not appear to have been coordinated with his campaign.

9 **1. Federal Election Activity**

10 The complaint alleges that the naming activity is federal election activity
11 (“FEA”), pursuant to 2 U.S.C. § 431(20)(iii), and that this activity resulted in a
12 contribution to Rep. Blunt. However, the facts do not indicate that MSU engaged in any
13 activities that fall under the statutory definition of FEA.

14 As an initial matter, the Act and Commission regulations restrict political party
15 committees, federal and nonfederal candidates, and the candidates’ committees from
16 using non-Federal funds to engage in the type of FEA alleged in the complaint, *see*
17 2 U.S.C. § 441i, but this funding restriction does not apply to other entities.

18 The definition of FEA includes a public communication that refers to a clearly
19 identified candidate for federal office (regardless of whether a candidate for State or local
20 office is also mentioned or identified) and that promotes or supports a candidate for that
21 office, or attacks or opposes a candidate for that office (regardless of whether the
22 communication expressly advocates a vote for or against a candidate). *See* 2 U.S.C. §
23 431(20)(iii); 11 C.F.R. § 100.24(b)(3). The Commission has concluded that the mere

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1 identification of a federal candidate is not itself tantamount to promoting, supporting,
2 attacking, or opposing that candidate. *See* Advisory Opinions 2007-34 (Jackson, Jr.),
3 2007-21 (Holt), and 2003-25 (Weinzapfel). Thus, only communications that directly
4 promoted or supported, rather than merely identified Rep. Blunt would even be eligible
5 for consideration as FEA.

6 Simple references to Rep. Blunt's name on building signs and the MSU website
7 are not FEA. Only the two press releases, which praise Rep. Blunt's efforts to obtain
8 funding for the new facility, could be construed as promoting or supporting his efforts
9 and expressing gratitude, however, neither of the press releases mentions Rep. Blunt's
10 candidacy or refers to any election. Moreover, Rep. Blunt had not declared his candidacy
11 for reelection as of the date on which MSU's board of governors resolved to name the
12 new facility after Rep. Blunt. Therefore, there is no basis on which to conclude that the
13 two MSU press releases would constitute FEA.

14 Even if MSU engaged in activities that fall under the statutory definition of FEA,
15 nothing in the Act or the Commission's regulations suggests that such activities would
16 *per se* result in a contribution as alleged in the complaint. A contribution includes any
17 gift, subscription, payment, loan, advance, or deposit of money or anything of value made
18 by any person for the purpose of influencing any election for federal office. *See* 2 U.S.C.
19 §§ 431(8); 11 C.F.R. §§ 100.52. In this matter, it does not appear that MSU's activities
20 related to naming the science building after Rep. Blunt were made for the purpose of
21 influencing any election for federal office. To the contrary, it appears that the purpose of
22 the naming activities were to thank Rep. Blunt for his support of the University in
23 general, and for his assistance in securing funding for the facility in particular. The press

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1 releases do not mention any election for federal office, nor do they refer to Rep. Blunt's
2 candidacy. Therefore, there is no reason to believe that MSU's activities in connection
3 with the naming of the science building resulted in a contribution to Rep. Blunt.

4 **2. Independent Expenditure**

5 An independent expenditure is an expenditure for a communication expressly
6 advocating the election or defeat of a clearly identified candidate that is not coordinated
7 with such candidate, the candidate's authorized political committee, their agents, or a
8 political party. 2 U.S.C. § 431(17); 11 C.F.R. § 100.16. A person (other than a political
9 committee) who makes an independent expenditure aggregating \$10,000 or more at any
10 time up to the 20th day before the date of an election is required to file a report with the
11 Commission describing the expenditure within 48 hours of making the expenditure.
12 2 U.S.C. § 434(g)(2)(A); 11 C.F.R. § 109.10(c). If any of MSU's naming activities
13 expressly advocated Rep. Blunt's election, the associated costs would be a prohibited
14 independent expenditure.

15 Under the Commission's regulations, a communication contains express advocacy
16 when it uses phrases such as "vote for the President," "re-elect your Congressman," or
17 "Smith for Congress," or uses campaign slogans or words that in context have no other
18 reasonable meaning than to urge the election or defeat of one or more clearly identified
19 candidates, such as posters, bumper stickers, or advertisements that say, "Nixon's the
20 One," "Carter '76," "Reagan/Bush," or "Mondale!" See 11 C.F.R. § 100.22(a); see also
21 *FEC v. Massachusetts Citizens For Life*, 479 U.S. 238, 249 (1986) ("[The publication]
22 provides in effect an explicit directive: vote for these (named) candidates. The fact that

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1 this message is marginally less direct than “Vote for Smith” does not change its essential
2 nature.”).

3 The Commission’s regulations further provide that express advocacy includes
4 communications containing an “electoral portion” that is “unmistakable, unambiguous,
5 and suggestive of only one meaning” and about which “reasonable minds could not differ
6 as to whether it encourages actions to elect or defeat” a candidate when taken as a whole
7 and with limited reference to external events, such as the proximity to the election. *See*
8 11 C.F.R. § 100.22(b).² In its discussion of then-newly promulgated section 100.22, the
9 Commission stated that “communications discussing or commenting on a candidate’s
10 character, qualifications or accomplishments are considered express advocacy under new
11 section 100.22(b) if, in context, they have no other reasonable meaning than to encourage
12 actions to elect or defeat the candidate in question.” *See* 60 Fed. Reg. 35292, 35295 (July
13 6, 1995).

14 The naming of the MSU science facility did not involve language that would
15 satisfy 11 C.F.R. § 100.22(a) or (b). A recent Commission decision addressing the use of
16 a federal candidate’s name is instructive in evaluating this matter. In MURs 5779 and
17 5805 (City of Santa Clarita), an incorporated municipality created and paid for 14 large
18 banners publicly thanking a sitting congressman by name for introducing a bill in

² The U.S. Supreme Court recently held that “an ad is the functional equivalent of express advocacy, and thus subject to the ban on corporate funding of electioneering communications, only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” *See FEC v. Wisconsin Right to Life, Inc.*, 127 S.Ct. 2652, 2667 (2007) (“*WRTL*”). Although 11 C.F.R. § 100.22 was not at issue in *WRTL*, the Court described “indicia of express advocacy” to include the “mention [of] an election, candidacy, political party, or challenger” or whether the communication “take[s] a position on a candidate’s character, qualifications, or fitness for office.” *Id.* The Commission subsequently incorporated the *WRTL* principles into its regulations governing permissible uses of corporate and labor organization funds for electioneering communications at 11 C.F.R. § 114.15. *See* Final Rule on Electioneering Communications, 72 Fed. Reg. 72899, 72914 (Dec. 26, 2007).

1 Congress that was favorable to the municipality. The banners, which were displayed
2 throughout the city, stated, "Thank you Buck for H.R. 5471! – No Mega Mining in
3 Soledad Canyon." *See* Commission Factual and Legal Analysis approved on March 30,
4 2007. The Complainant in those MURs alleged that the banners were independent
5 expenditures because they advocated the re-election of Rep. Howard P. "Buck" McKeon.
6 The Commission concluded that the banners did not expressly advocate Rep. McKeon's
7 candidacy, since they made no reference to an election or contained any explicit electoral
8 language. *See* Commission Certification dated March 30, 2007.

9 In this matter, it does not appear that MSU's naming activities would qualify as
10 express advocacy under either 11 C.F.R. § 100.22(a) or (b). First, neither the naming
11 ceremony, press releases, outdoor signs, nor MSU website postings appear to contain
12 any of the "magic words" or their equivalent under 11 C.F.R. § 100.22(a). Second, the
13 activities do not appear to have any electoral portion that is unmistakable, unambiguous,
14 and suggestive of only one meaning under 11 C.F.R. § 100.22(b). Significantly,
15 Complainant provides no evidence, and the available information does not indicate or
16 even suggest, that the naming ceremony, press releases, outdoor signs, or MSU website
17 postings mention or refer to Rep. Blunt's 2008 candidacy. Therefore, as with the
18 banners in the Santa Clarita matter, it does not appear that any of MSU's public
19 statements regarding the naming of the science facility expressly advocated the election
20 of the named congressman. Thus, MSU did not make a prohibited independent
21 expenditure.

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3. Coordinated Communication

Under the Act, an expenditure made by any person “in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents” constitutes an in-kind contribution. 2 U.S.C. § 441a(a)(7)(B)(i). As a federal contractor, MSU would be prohibited from paying for a coordinated communication. *See* 11 C.F.R. § 109.22.

Although Complainant makes no specific allegation that MSU coordinated with either Rep. Blunt, his campaign committee, or their agents in naming and publicizing the science facility, the Commission addressed the issue as part of the complaint’s allegation that the naming constituted an in-kind contribution. As an initial matter, there is no information in the record to indicate that MSU named the facility at the request or suggestion of Rep. Blunt, or that he played a role in or influenced any MSU disbursement relating to the naming of the facility.

In characterizing the purported benefit to Rep. Blunt, Complainant focuses on the fact that Rep. Blunt’s name was mentioned in building signage, on the MSU press releases, and on the MSU website. As discussed below, however, these references do not constitute coordinated communication that would cause an in-kind contribution. A communication is coordinated with a candidate, a candidate’s authorized committee, or their agents when the communication satisfies the following three-pronged test set forth in the Commission’s regulations at 11 C.F.R. § 109.21(a): (1) the communication is paid for by a person other than a candidate, the candidate’s authorized committee, or their agents; (2) the communication satisfies at least one of the content standards set forth in

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1 11 C.F.R. § 109.21(c); and (3) the communication satisfies at least one of the conduct
2 standards set forth in 11 C.F.R. § 109.21(d).

3 The payment prong of 11 C.F.R. § 109.21(a)(1) appears satisfied in this matter,
4 since MSU appears to have paid for the activities related to naming and publicizing the
5 facility. However, neither the content nor the conduct prongs appear to be satisfied.

6 It does not appear that MSU's activities related to naming the facility satisfy any
7 of the four content standards required under 11 C.F.R. § 109.21(c). In sum, it does not
8 appear that MSU made any: (1) electioneering communication; (2) public
9 communication that republished, disseminated, or distributed, in whole or part, a
10 candidate's campaign materials; (3) public communication that contained express
11 advocacy; or (4) a public communication within a 90-day period prior to an election.
12 *See* 11 C.F.R. § 109.21(c).

13 As previously mentioned, it is doubtful that any of MSU's naming activities even
14 qualify as a public communication. Significantly, even if any of the naming activities
15 qualify as a public communication, they do not appear to be any of the types of public
16 communications necessary to satisfy the content standard, in that they (1) do not
17 constitute electioneering communications (which require use of broadcast media such as
18 radio or television); (2) do not constitute republication of campaign materials; (3) do not
19 include express advocacy (*see* discussion above); or (4) did not occur within 90 days of a
20 federal election. *See* 11 C.F.R. § 109.21(c)(1)-(4).

21 Finally, MSU's naming activities do not satisfy any of the applicable conduct
22 standards. There is no information to suggest that Rep. Blunt or his campaign committee
23 or their agents requested or suggested that the facility be named after him, or that they

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1 were materially involved or had substantial discussions with MSU about naming the
2 facility. *See* 11 C.F.R. § 109.21(d)(1), (2), and (3). Furthermore, it does not appear that
3 the activities involve a common vendor, former campaign employee, or the
4 dissemination, distribution, or republication of campaign materials. *See* 11 C.F.R.
5 § 109.21(d)(4), (5), and (6). Therefore, it does not appear that MSU made a coordinated
6 communication by naming the science facility after Rep. Blunt.

7 **4. Conclusion**

8 The available information does not show that MSU engaged in FEA, or made
9 either an independent expenditure or a coordinated communication, by naming its science
10 facility after Rep. Blunt. Although Complainant argues that naming the facility after
11 Rep. Blunt enhances his name recognition, in the absence of any electoral advocacy, it
12 does not appear to be anything of value made “for the purpose of influencing” a federal
13 election. Therefore, the Commission finds no reason to believe MSU violated the Act in
14 this matter.

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